



July 31, 1996

FMLA-82

Dear *Name\**,

Thank you for your letter of June 21, 1996, forwarding correspondence from *Name\**, who expresses concern with certain employment issues surrounding his wife's use of leave due to a serious health condition under the Family and Medical Leave Act of 1993 (FMLA). Since we do not have the employer's policies for implementing FMLA, we can only address concerns in general terms.

In enacting FMLA, Congress stated that one of the purposes of this law is to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition. The FMLA allows up to 12 weeks of unpaid, job-protected leave in any 12 months—with group health insurance coverage maintained during the leave—to eligible employees for the above mentioned family and medical reasons. Upon completion of the leave, the employee must be returned to work to the same or an equivalent position with equivalent pay, benefits and other terms and conditions of employment. Paid leave benefits, which are available for an employee to use, may be substituted at the employee's or employer's option for any portion of the unpaid leave mandated by this law. Employers are required to notify employees in writing of their FMLA rights and obligations while on FMLA leave and to keep track of its usage. It is unlawful for any employer to interfere with or restrain or deny the exercise of any right provided under this act, or to discharge or in any other manner discriminate against an employee for opposing or complaining about any unlawful practice related to this act. A copy of a fact sheet that summarizes FMLA's provisions is enclosed.

Nothing in FMLA (401 of the statute and 825.702 of the regulations) modifies or affects any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability. For example, where FMLA and the Americans With Disabilities Act (ADA) apply simultaneously, an employer must comply at all times with these laws and in a manner that assures the most generous provisions of both laws would apply. In the case of an employee with a serious health condition under FMLA who is also a qualified individual with a disability under ADA, requirements from both laws must be observed and applied in a manner that assures the most beneficial rights and protection. For instance, a reasonable accommodation under ADA might be accomplished by providing an individual with a disability with a part-time job which does not ordinarily provide health benefits. Under FMLA, an eligible employee would be permitted to work a reduced leave schedule for up to 12 workweeks of leave in any 12-month period with group health plan benefits maintained during the leave. Enclosed is a fact sheet prepared by the Equal Employment Opportunity Commission (EEOC) which administers and enforces the ADA; that provides technical assistance on the interplay between the ADA and FMLA.

The purpose of FMLA is to make temporary leave available to eligible employees of employers within its coverage, and not to limit already existing rights and protection under applicable anti-discrimination statutes (e.g., the ADA). It is not the intent of FMLA to discourage an employer from adopting or retaining more generous employment benefits or leave policies that provide greater family or medical leave rights than those provided under this law. The FMLA does not prevent an employer from amending existing leave and employee benefit programs, provided they comply with the act.

We do not believe that the implementation of FMLA by *Name\** wife's employer has been detrimental to her employment, particularly with respect to the notification that she is entitled to 12 weeks of job protected leave in a 12-month period under this law. We wish to point out that prior to FMLA, employees enjoyed no Federal guarantees with respect to absences related to family and medical leave, job restoration, or continued group health care coverage. Employers, for example, would have been able to refuse leave or terminate employees needing to take time off to take care of family and medical situations. The FMLA now guarantees employees at least 12 weeks of job and health care benefits protection in a 12-month period.

Any change to extend the leave provisions under FMLA would require an amendment to the statute. Accordingly, President Clinton has recently proposed an expansion to FMLA to cover leaves for school



activities, for routine family medical services, and for older relatives' health needs. The proposal would establish family-friendly leave standards for up to 24 hours of unpaid leave a year. A copy of the press release on the President's "Family-Friendly Workplace Proposal" is enclosed.

We appreciate your concerns and those of **Name** \*. If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

Howard B. Ostmann  
Office of Enforcement Policy  
Family and Medical Leave Act Team

Enclosures

*\* Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).*